

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of the Pay  
Telephone Reclassification and  
Compensation Provisions of the  
Telecommunications Act of 1996

CC Docket No. 96-128

**REPLY COMMENTS OF THE  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

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## SUMMARY

Contrary to the claims of various interexchange carrier ("IXC") parties, Section 276 of the Act does not direct the Commission to minimize any possible compensation burden on carriers or customers that benefit from the availability of payphones. Rather, the Commission is tasked to ensure that payphone service providers ("PSPs") are fairly compensated for every intrastate and interstate call. While the Commission has discretion in resolving policy issues, in the final analysis there is a revenue requirement that must be met in order to fairly compensate PSPs and "promote the widespread deployment of payphones." To satisfy the statutory mandate, the Commission may not focus narrowly on "marginal costs" for only one group of calls. Rather, it must consider the overall compensation requirements for all calls, and ensure that any deficiency in one call category is made up by prescribing an offsetting compensation rate on other calls.

The Commission clearly has authority, under the express terms of Section 276, to prescribe a uniform nationwide maximum local coin rate. The Commission must do so or it will leave most PSPs without fair compensation on some 70% of their payphone usage. The Commission need not be overly concerned about overcompensating PSPs because market forces will ensure that local rates will not exceed what the market will bear.

The comments demonstrate that prescribed compensation for coinless calls should include international, intrastate, and interstate calls, and 0- and 0+ calls as well as "dial-around" calls. There is no merit to claims of prepaid card service providers and

paging companies that subscriber 800 compensation will have an unwarranted and disastrous impact on them. The comments also demonstrate that there are a number of tracking and administration alternatives available to the Commission in crafting the most effective and efficient compensation scheme. Any problems with fraudulent self-generation of calls will be relatively minor irritants, and can and should be dealt with by strict enforcement and harsh penalties.

The comments of the RBOC Coalition demonstrate that use of market-based surrogates is reasonable and the most effective way to ensure a fair compensation level. If rates are based on costs, all payphone costs must be considered, not just "marginal" costs for one call category, because the Commission's mandate is to ensure fair compensation for all calls. If costs are considered, the cost data presented by IPP providers is more detailed and more credible than that presented by the RBOC Coalition, and the data presented by IXC's is not credible at all.

Regarding interim compensation, no party has even presented a colorable argument against the compelling case APCC presented in its initial comments demonstrating that the Commission must immediately mandate interim compensation for IPP providers in the amount of \$40.00 per month for subscriber 800 calls, and interim access code compensation on a per-call basis or the equivalent.

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The American Public Communications Council ("APCC") hereby files its reply comments in this proceeding.

**I. COMPENSATION (§§ 14-40)**

Various commenting parties have suggested that the Commission can distance itself from certain aspects of payphone compensation and focus solely on certain isolated pieces. Some state commissions urge the Commission to defer to state decisions regarding local coin rates, and target the FCC compensation scheme solely at coinless calls -- or, according to some state commissions, solely interstate coinless calls. A number of interexchange carriers urge the Commission to apply a "marginal cost of a call" standard to dial-around calls, without addressing fair compensation for other calls, or even considering

whether the compensation available to PSPs on other calls is sufficient to allow recovery of the remaining costs.

These parties would have the Commission disregard the statutory mandate to ensure that all payphone service providers are fairly compensated for each and every intrastate and interstate call. The Commission certainly has some discretion in how it implements the statute. However, whatever compensation scheme is adopted must meet the statutory standard of ensuring fair compensation for every call. This standard clearly cannot be satisfied by a scheme that leaves out the 65-70% of payphone calls that are local coin calls.<sup>1</sup> The standard also cannot be satisfied by a scheme that defines fair compensation as recovery of "marginal costs per call" while leaving the bulk of payphone costs to be recovered by unspecified compensation mechanisms.

Some interexchange carriers ("IXCs") repeatedly warn the Commission not to set compensation rates that grant "windfall" profits to PSPs at IXCs' expense. In fact, it is the IXCs who have for years enjoyed the "windfall" of free use of independent public payphones ("IPPs") to generate subscriber 800 traffic,<sup>2</sup> while paying nothing at all, either directly or through CCI, as compensation to IPPs. Now, under the express terms of Section 276(b)(1), IXCs can look forward to the additional bonus of being relieved of at

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<sup>1</sup> APCC at 5. Further analysis of APCC's SMDR data confirms that local coin calls represent more than 90% of coin calls.

<sup>2</sup> In addition, IXCs other than AT&T (which pays voluntary intrastate access code compensation of 25 cents per call) enjoy the windfall of free access to IPPs for most intrastate access code traffic originating from IPPs

least \$360 million per year in carrier common line ("CCL") payments in the interstate jurisdiction alone, and more than \$125 million per year in corresponding payments in the intrastate jurisdiction,<sup>3</sup> for a total of almost half a billion dollars per year. The IXC's complaining about "windfalls" do not even mention these huge cost savings that they are about to gain, since it would detract from the impression of an enormous compensation "burden" about to descend upon them. When the whole picture is in place, it is clearly the IXC's who will continue to receive, and indeed greatly multiply, "windfalls" from free use of payphones if the Commission fails to ensure fair compensation for every call.

In any event, the Commission is not directed by the statute to minimize compensation burdens on IXC's or any other carrier or customer that benefits from the availability of a payphone.<sup>4</sup> Rather, the Commission is tasked with ensuring that PSP's are fairly compensated for each and every call. The Commission has a number of issues to resolve in carrying out this mandate. For example, the Commission must consider what

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<sup>3</sup> In general, the manner in which payphones have been subsidized is not as evident at the state level as it is at the federal level, where some of the LEC's payphone costs are expressly attributed to payphones in the LEC's ARMIS reports. The above estimate of the intrastate subsidy paid by IXC's was derived by simply multiplying the amount of annual interstate IXC subsidy that is expressly acknowledged in LEC ARMIS reports by the ratio of interstate MOU to intrastate interLATA MOU. Thus, the estimate assumes that intrastate interLATA access charges subsidize LEC payphones in approximately the same degree (relative to traffic volume) as do interstate access charges. APCC believes that this estimate is very conservative because it is based on the unlikely assumptions (1) that the total amount of interstate subsidy is no higher than the amount stated in ARMIS reports, and (2) that none of the access charges paid by IXC's on intraLATA calls are used to support LEC payphones.

<sup>4</sup> See H.R. Rep. No. 204, Part 1, 104th Cong., 1st Sess. 88 (1995)("House Report")("Carriers and customers that benefit from the availability of a payphone should pay for the service they receive when a payphone is used to place a call").

happens in the intrastate and interstate jurisdictions, address how much compensation should be gained from local coin calls as opposed to coinless calls, and decide issues of methodology -- market-based or cost-based surrogates, average versus marginal costs. While the Commission indisputably has significant discretion in resolving policy issues, in the final analysis there is a revenue requirement that must be achieved in order to fairly compensate PSPs for each and every call and "promote the widespread deployment of payphone services". 47 U.S.C. § 276(b)(1). If this requirement is not met on coinless calls, the difference must be made up on coin calls, and vice versa. The Commission must consider the overall revenue problem and how it is to be solved in order to satisfy the statutory requirement. One thing the Commission may not do, consistent with the statute, is to focus narrowly on one group of calls, such as dial-around calls, set a rate based on "marginal costs" for that category, and simply leave it to "the marketplace" to ensure that the remaining costs of operating payphones are made up on other calls.

A. **The Commission Must Prescribe A Local Coin  
Rate(¶¶ 19-22)**

1. **The Commission Has Authority to Prescribe  
Compensation for Intrastate Payphone Calls**

Some parties contend that, notwithstanding the unequivocal language of Section 276, the Commission lacks authority to prescribe the charge to be collected by payphone providers in the form of a coin deposit when their payphones are used to make local calls.



These parties cite preexisting Section 2(b), which states:

nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service

47 U.S.C. § 152(b).

These arguments disregards a key difference between Section 276 and other provisions of the Communications Act. The language of Section 276 is virtually unique in the Act in that it expressly authorizes the Commission to regulate compensation for "intrastate" calls that use payphones. There is no ambiguity whatsoever about Congress' intention to give the Commission the authority and the mandate to regulate this particular type of intrastate communications service.<sup>5</sup>

According to these parties, however, even though Section 276 expressly authorizes the Commission to "prescribe regulations" that ensure that payphone service providers are fairly compensated for "each and every intrastate . . . call," the section must

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<sup>5</sup> The focus on intrastate calls is quite deliberate, and cannot be dismissed as an instance of sloppy draftmanship. The word "intrastate" is used three times in Section 276. In addition to ensuring fair compensation for "each and every" intrastate call, the Commission is directed to discontinue "the intrastate and interstate carrier access charge payphone service elements" and "all intrastate and interstate payphone subsidies." 47 U.S.C. § 276(b)(1)(B). Section 276 also expressly requires that the Commission's Section 276 regulations should preempt any inconsistent state regulations. 47 U.S.C. § 276(c). The repeated and deliberate inclusion of intrastate payphone service within Section 276, coupled with an express mandate to preempt inconsistent state regulations, reflects a specific Congressional intent to give the FCC plenary responsibility to restructure the regulation of both intrastate and interstate payphone service. In other words, Congress deliberately created a payphone exception to the traditional division of jurisdiction under Title II of the Act.

somehow be implemented without contravening the generic Section 2(b) prohibition against regulating intrastate communication service (since that prohibition was not expressly amended to reflect the new authorization granted by Section 276).

It is simply not possible for the Commission to carry out its Section 276 mandate without in some manner regulating intrastate rates. The Commission cannot "ensure that payphone service providers are fairly compensated" for "each and every intrastate" call if the Commission does not have authority to determine what is a "fair" level of compensation for such calls and, where appropriate, to prescribe that "fair" level of compensation. Although the Commission has a number of options for carrying out the compensation provision with regard to coin calls, at some point the Commission must have authority to set the compensation or it cannot ensure that the compensation will be fair.<sup>6</sup>

Thus, there is a direct conflict between the specific terms of Section 276, which give the Commission jurisdiction over intrastate payphone rates, and the general terms of the pre-existing Section 2(b), which denies the Commission jurisdiction over intrastate rates. In these circumstances, the principles of statutory construction direct that:

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<sup>6</sup> Further, if the Commission could not prescribe compensation for local coin calls, it could not ensure fair compensation of payphone service providers for other classes of calls. Clearly, compensation cannot be fair unless it gives payphone service providers a reasonable opportunity to recover their joint and common costs of providing payphone service. Recovering only the "marginal cost" of each type of call would force PSPs out of business because they would be unable to recover their joint and common costs, which must be paid in order to make possible any calls at all. Thus, the Commission must be able to address compensation for all calls in order to ensure that joint and common costs can be recovered. If the Commission were precluded from regulating compensation for local coin calls, it could not ensure that compensation for other calls is adequate to recover the portion of a provider's joint and common costs that are not recoverable on local coin calls.

Where there is inescapable conflict between general and specific terms or provisions of a statute, the specific will prevail.

Sutherland, Statutory Construction, § 22.34. Further:

[i]f the new provisions and the reenacted or unchanged portions of the original section cannot be harmonized, the new provisions should prevail as the latest declaration of the legislative will.

Id. In this case, Section 276(b) is the more specific provision because it directs the Commission to regulate intrastate payphone calls, while Section 2(b) is a more generic prohibition against exercising jurisdiction over intrastate calls. In addition, Section 276 is the new provision, while Section 2(b) is the old. Therefore, Section 276 prevails on both counts.

2. The Commission Has an Affirmative  
Responsibility to Ensure Fair Compensation for  
Local Coin Calls

Contrary to the suggestions of some commenting parties, the Commission is not free to "defer" to the states on whether or not PSPs are fairly compensated for local coin calls. The Act plainly imposes that responsibility on the Commission. It is true that the states traditionally have had responsibility for deciding the level of local coin rates. But the Act has changed the status quo. The ultimate responsibility is now the Commission's. The question is not whether, but how to discharge that responsibility.

None of the commenters has presented convincing reasons why that responsibility should not be handled directly, by prescribing a uniform "fair" compensation rate. The fact that states have traditionally handled this task is not a good reason for them

to continue to do so now that Congress has imposed an affirmative responsibility in this area on the FCC. Moreover, the states experience in this area has been primarily in setting what the Bell companies now concede are subsidized rates. RBOC Coalition at 16. What is required now, as APCC explained, is to address the issue of fair compensation in a non-subsidized environment where LEC payphones are no longer treated as part of the local exchange revenue requirement. In this new environment, the states' experience in setting subsidized rates would be of little help -- and might be a significant handicap.

As explained by APCC, any regulation of the local coin rate at the state level ultimately would have to be reviewed by the FCC in any event to ensure compliance with the Act. Prescribing a nationwide local coin rate in the first place will ensure uniformity for interstate travelers and will avoid the need for multiple determinations of 'fair' compensation at different jurisdictional levels.

Some parties contend that a nationwide rate set by the FCC will fail to take account of state-to-state differences in costs or demand. This argument disregards that the nationwide rate would be a maximum rate: individual PSPs in particular areas would be free to charge a lower rate if they could do so while recovering their costs. If market conditions permit some PSPs to charge below the nationwide maximum, they are likely to do so, thereby exerting pressure on other PSPs to reduce their rates in order to be competitive. According to the Iowa Utilities Board, this is what happened in Iowa, where there is no maximum local coin rate at all:

Since 1985, payphone providers [in Iowa] have been free to set the rate at whatever the market will bear.

After the deregulation of the local coin rate, as would be expected, some payphone providers raised their rates to test the market rate to determine what would be acceptable to the public. However, after eleven years of deregulation, by far the majority of Iowa payphones have a rate of \$.35 for a local call. While this is not the regulated rate in Iowa, it does appear to be what the market will bear.

Iowa at 3. This evidence regarding market dynamics further supports APCC's proposal to establish a nationwide maximum coin rate at 40 cents. This maximum rate provides leeway for variation in rates in response to local market conditions, while at the same time protecting consumers from being charged a rate that is too much higher than what they have been paying in the current subsidized environment. If market conditions permit some PSPs to charge a lower rate in a particular state or locality, then market forces can be expected to push local coin rates in that area down to the market rate.

As this example shows,<sup>7</sup> the Commission should not be overly concerned that the public interest involved in setting a local coin rate that is too high for a particular area or for the nation in general. If the maximum rate is too high, market forces will bring it down to a reasonable rate. However, if the maximum rate is too low, market forces will be powerless to correct the problem. In the absence of sufficient compensation on other calls to offset the deficiency on local coin calls, the supply of payphones will drop, and the Commission will have failed to carry out the statutory purpose to "promote the widespread deployment of payphone services . . . ."

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<sup>7</sup> Similar experiments are under way in Illinois and Michigan, and appear to have resulted in market forces settling on a 35 cent rate for the present.

If the Commission believes that additional flexibility is necessary to accommodate state-by-state variations in market conditions, then the Commission can adopt the "fourth option" proposed by the Florida Public Service Commission ("FPSC").

The FPSC states:

We believe that a nationwide sent-paid local coin maximum rate or cap should be established with an expressly stated mechanism so that a state may petition for a variance from the nationwide cap. With the variation in what is paid for underlying services, it is conceivable that the nationwide sent-paid local calling rate cap may not be appropriate for all states in all circumstances

Allowing individual states to seek a waiver, based on a particularized showing of conditions in specified areas, whereby the Commission allows application of a cap that is either higher or lower than the national maximum, would provide additional leeway to the extent necessary to accommodate market conditions that are demonstrated not to be adequately addressed by competitive forces operating within the national maximum.

On the other hand, allowing states to establish lower local coin rate caps at will, as several states propose, would defeat the primary statutory purpose that must be served by a national cap, which is "to ensure that all payphone service providers are fairly compensated . . . ." Having determined that fair compensation for local coin calls is forty cents per call, the Commission must not allow lower caps to be imposed without first determining that such a lower cap would in fact still fairly compensate PSPs in the affected area.

Further, APCC believes any variance granted to a state should "sunset" after a limited term, unless the Commission affirmatively finds that it should be renewed.

3. **Prescribing a Local Coin Rate Is Sound Public Policy**

There are additional public policy reasons why the Commission should prescribe a fair local coin rate now. As stated in APCC's initial comments, prescribing a nationwide maximum local coin rate will encourage uniform nationwide rates, reducing confusion and enhancing convenience for payphone users.<sup>8</sup> Further, prescribing a local coin rate now will limit the amount of compensation that will otherwise be required on other calls, i.e., 0+, access code and subscriber 800 calls, in order to ensure fairness and widespread deployment of payphone services, and will enable the Commission to implement a well-balanced scheme of payphone compensation that avoids loading an excessive burden on any class of carriers or customers. Finally, prescribing a local coin rate now avoids the waste of administrative resources on a multiplicity of state proceedings that attempt to prescribe a fair local coin rate after the restructuring of LEC payphones, followed by individualized

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<sup>8</sup> Contrary to the views stated by some state commissions, convenient local and intrastate calling at payphones clearly promotes interstate commerce and regulation of compensation for such calls is well within Congress's constitutional powers. Apart from the obvious fact that numerous interstate travelers make local calls, local payphone calling is a basic necessity for numerous business people involved in making sales calls, service visits, etc. for a wide variety of businesses involved in the stream of interstate commerce. The resistance of some state commissions to FCC involvement in this area is not a matter of constitutional dimension; it simply reflects discomfort with the fact that Section 276 represents a clear and deliberate variation from the traditional division of jurisdictional authority over wireline services. However, payphones -- as a wireline "mobile" service -- are as important to the federal interest in promoting interstate commerce as the wireless mobile services over which the Commission has exercised jurisdiction for years.

FCC review of each of the outcomes at the state level, in piecemeal fashion as they occur, to ensure that the outcome complies with Section 276

B. Types Of Compensable Coinless Calls

1. The Commission Has Authority to Prescribe Compensation for International Calls (§ 18)

Many of the IXCs claim that the Commission lacks authority to prescribe compensation for PSPs for international calls. These parties argue that, because Section 276 of the Act specifies that PSPs should be fairly compensated for "interstate" and "intrastate" calls but not "international" calls, the Commission lacks authority to prescribe compensation for international calls.

These parties' reasoning is fallacious. As AT&T suggests, Section 276 may implicitly include international calls within the ambit of the term "interstate". AT&T at 5.<sup>9</sup> And in any event, the Commission has authority to prescribe compensation for international calls under the general provisions of the Act.

Parties opposing compensation for international calls rely on the negative inference that, because Section 276 specifies "intrastate and interstate" but leaves out "international," under the maxim *expressio unius est exclusio alterius*, Congress must have

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<sup>9</sup> The obvious reason why Congress made a point of spelling out "intrastate and interstate" in the compensation provision was to make clear that the Commission was no longer bound to observe the traditional division of state and federal authority with respect to payphone compensation. It was not necessary for Congress to spell out the Commission's existing authority to prescribe compensation for international calls.



intended to deny the FCC authority to prescribe compensation for international calls, even under other provisions of the Act. The Court of Appeals has specifically disapproved this type of negative inference. See Cheney R. Co., Inc., v. ICC, 902 F.2d 66, 68-69 (D.C. Cir. 1990); TRT Telecommunications Corp. v. FCC, 876 F.2d 134, 146 (D.C. Cir. 1989).

A negative inference is particularly inappropriate here because the FCC already had the authority to compensate PSPs for international calls before enactment of the statutory provision.<sup>10</sup> No party advances any substantial reason why Congress might even hypothetically<sup>11</sup> have wanted to take away the Commission's existing authority to compensate PSPs for international calls. The Commission clearly has and should exercise authority to prescribe such compensation under the general provisions of the Act.

## 2. Intrastate Calls

Even if the Commission does not prescribe compensation for local coin calls, it is clear that the Commission must not exclude intrastate calls from the compensation it prescribes for coinless calls, as some parties request. Apart from the fact that the Commission has a statutory obligation to ensure fair compensation for such calls, it would

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<sup>10</sup> This authority exists both under Section 226(e)(2) of the Act, 47 U.S.C. § 226(e)(2), and under the general provisions of the Communications Act. The calls compensable under Section 226(e)(2) are not limited to "interstate" calls. Authority exists under the general provisions of the Communications Act for the reasons stated in APCC's August, 1995 ex parte letter in CC Docket No. 91-35. See Letter to William F. Caton, Acting Secretary, from Albert H. Kramer, August 17, 1995, at 10-13.

<sup>11</sup> There is not a scintilla of evidence of actual Congressional intent.

needlessly complicate the compensation scheme if the Commission were to prescribe one compensation rate for interstate coinless calls, while allowing states to prescribe different rates for intrastate coinless calls. Since neither PSPs nor LECs necessarily know whether a subscriber 800 call is intrastate or interstate, it would be difficult or impossible for PSPs to verify that the correct compensation rate was being paid on the different types of calls.

3. 0+ Calls Routed to the Presubscribed OSP  
(¶ 16)

Various parties uncritically accept the Commission's tentative conclusion that PSPs should not be compensated on 0+ calls. As Ameritech points out, however, the Act requires a compensation scheme for "each and every intrastate and interstate call," including 0+ calls. Ameritech at 3-4. While, as some parties point out, Section 226 specifically excluded compensation for calls "routed to the presubscribed provider of operator services" (47 U.S.C. § 226(e)(2)), that is not a reason to disregard the fact that Section 276 encompasses all calls.

Furthermore, as Ameritech points out, applying a uniform compensation charge to 0+ calls as well as "dial-around" calls is perfectly consistent with a system of negotiated compensation for 0+ calls. Since there are a number of circumstances in which 0+ calls may not be fairly compensated at present,<sup>12</sup> in order to ensure fair compensation on 0+ calls the

<sup>12</sup> For example, a PSP may not have a choice of carriers on 0+ intraLATA calls. Worldcom at 8. While this circumstance must change under the Act, intraLATA rate ceilings based on LEC rates from the era of subsidized LEC payphones generally do not include an element for the use of payphones and thus do not allow PSPs to be fairly compensated even though a choice of carriers is technically available.

fair compensation rate should apply uniformly to 0+ calls as well as other coinless calls. If there is already fair compensation embedded in the commission payments received by a PSP, the market will adjust the commission level accordingly. Given the prevalence of rate ceilings, as discussed in APCC's initial comments, it will be easier for the market to achieve appropriate commission levels if the FCC acts to ensure a uniform fair compensation level for the payphone equipment on every call.

**C. Entities Required To Pay Compensation (§§ 24-28)**

Most of the major carriers implicitly acknowledge that coin deposits are impractical as a means of compensation for currently "coinless" calls, given callers' entrenched expectations.<sup>13</sup>

Some smaller carriers strongly advocate coin deposits on the grounds that is improper to collect compensation from any entity except the party that chose to place the call. These parties -- primarily debit card providers and paging companies -- essentially argue that it is unfair to make carriers pay compensation, especially on subscriber 800 calls, because (1) they cannot control calling from payphones; (2) their payphone calling volume is so significant that their "razor-thin margins" of profit would not survive any significant compensation payment; and (3) they are unable to determine in real time that a call is originating from a payphone, and therefore, cannot recover payphone compensation charges to their customers.

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<sup>13</sup> The exception is directory assistance, which is currently subject to coin payments in a number of states.

These arguments are wholly unconvincing and, in many cases, internally inconsistent. Significantly, no end users or groups of end user subscribers to 800 services have filed comments complaining about the hardship that would be imposed by compensating PSPs for subscriber 800 calls.<sup>14</sup> The only complaints are made by carriers. If payment of payphone compensation would be detrimental to certain carriers, it must be because those carriers have built their businesses in reliance on free calling from payphones by their customers.<sup>15</sup> Thus, for example, debit card companies issue cards with the clear expectation that the cards will be used primarily at payphones -- they can't pretend ignorance of the fact that payphones are central to their business. These companies have,

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<sup>14</sup> Paging Network, Inc. ("PageNet") speculates that a substantial number of subscriber 800 calls may be placed from payphones to government and public service organization subscribers such as various types of "hotlines". PageNet raises the spectre of all these public service organizations falling off the 800 network and million of beneficiaries of their services being stranded. PageNet provides no statistical data regarding payphone-originated traffic volumes to these organizations. None of these organizations has filed comments in this proceeding saying that if PSPs are compensated, their constituencies will be left out of touch. Nor could they. In fact, the overwhelming bulk of usage of 800 services is commercial or discretionary personal, such as 800 personal numbers.

<sup>15</sup> In the case of paging services, the parties filing comments provide no substantial evidence that 800 traffic from payphones is substantial enough to pose a problem. To the extent that paging companies do receive substantial payphone traffic, it apparently consists of callers using payphones in order to dial 800 numbers given to them by the paging companies' subscribers. While these callers may have no customer relationship with the paging company, their use of "toll-free" 800 numbers provided by the paging company to reach paging service subscribers is clearly encouraged by the paging company as a convenience that increases the value of the service to the paging company's subscribers. When such calls to paging services are made from payphones, the payphone is typically used twice without payment to the PSP. The initial call is a "toll-free" 800 service call to page the subscriber, followed by a follow-up call back to the payphone by the subscriber who was paged. As the RBOC Coalition points out, incoming calls to payphones also "use" the payphone and are currently uncompensated

in effect, chosen to rely on the benefits of payphone access and should not be heard to complain that paying for such access is unfair <sup>16</sup>

Requiring carriers and/or 800 service subscribers to pay compensation for the use of payphones to make subscriber 800 calls is entirely consistent with Section 276 and in fact, is exactly what was contemplated by Congress. According to the House of Representatives report on H.R. 1555, the payphone compensation provision of which was enacted as Section 276(b)(1)(A):

In place of the existing regulatory structure, the Commission is directed to establish a new system whereby all payphone service providers -- BOC and independent -- are fairly comensated for every interstate and intrastate call made using their payphones, including, for example, "toll-free" calls to subscribers to 800 and new 888 services and calls dialed by means of carrier access codes. Carriers and customers that benefit from the availability of a payphone should pay for the service they receive when a payphone is used to place a call.

H.R. Rep. No. 204, Part 1, 104th Cong., 1st Sess. 88 (1995) (emphasis added).

Further, the claims of financial impact on paging companies and prepaid service providers are entirely premised on the assumption that these carriers themselves would be required to make compensation payments. APCC's proposal is that compensation for subscriber 800 calls, including calls to paging companies and prepaid card platforms, should be paid by the 800 service provider -- the carrier to which the call is initially routed

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<sup>16</sup> Some of the carriers complaining about the burden of compensating PSPs for the benefit they receive state that they are small businesses with "razor-thin" profit margins. Most PSPs are also small businesses. Further, many PSPs will have non-existent profit margins unless they are fairly compensated for subscriber 800 calls. See generally Comments of Peoples Telephone Company; Comments of Communications Central, Inc.

by the LEC when an 800 number is dialed. Under such a system, it will be up to that carrier whether to recover that compensation payment directly from the 800 subscribers that receive calls from payphones, or to spread recovery of compensation payments over a wider customer base.

Further, even assuming that compensation payments are directly or indirectly assessed on 800 subscribers, the claim that carriers who are 800 subscribers cannot pass compensation costs on to their customers is specious. Indeed, International Telecard Association ("ITA") acknowledges that whether to obtain real-time ANI (which would enable the company to identify payphone-originated calls and thus to debit a prepaid card for the amount of the payphone compensation) is a voluntary choice of the prepaid card provider. ITA at 9. Further, there is no convincing explanation of why, even in the absence of real-time ANI, prepaid card providers cannot simply spread payphone compensation costs over their charges for all calls.

In sum, the claims of some smaller carriers that they would be improperly burdened if 800 subscriber calls received by them were subject to "carrier-pays" or "set use fee" compensation are utterly without merit.

D. Tracking And Administration (§§ 29-34)

1. Problems Alleged by Smaller Carriers

Regarding call tracking and compensation administration, various smaller carriers contend that they are not able at present to track calls, and that they would be overwhelmed by the administrative burden of dealing with compensation transactions involving hundreds or thousands of PSPs. There are a number of alternatives for minimizing unnecessary burdens on smaller carriers. For example, APCC has already proposed that calls to prepaid card service providers be treated as subscriber 800 calls, so that the administration of payments could be handled by the underlying carrier providing the 800 service to the prepaid card platform.

In the comments of other carriers, the administrative burden has been exaggerated by portraying the compensation system as made up of millions of transactions that must be managed between thousands of different pairs of participants. In fact, under the existing system, APCC acts as a clearinghouse to aggregate the compensation claims of more than a thousand payphone companies. Furthermore, Cincinnati Bell handles compensation transactions for a number of different IXC's. The availability of such clearinghouses<sup>17</sup> minimizes any administrative problems arising from the presence of numerous participants.

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<sup>17</sup> To the extent that some parties are dissatisfied with the arrangements offered by existing clearinghouses, as Frontier in previous FCC filings has stated regarding Cincinnati Bell, they are free to form their own clearinghouses.

2. Alternatives to IXC Tracking

With respect to tracking, APCC believes that the Illinois experience, in which the "Big Three" carriers are already paying per-call compensation for subscriber 800 as well as access code calls, demonstrates that at least for these three carriers, the problem of tracking is basically solved. According to AT&T, however, it is able to pay per-call compensation currently required for such calls in Illinois only because it is managed to jury-rig a system that is not feasible to extend to the nation as a whole. AT&T estimates it would take a year to implement a nationwide system. APCC believes that a year is an unnecessarily long lead time, but in any event, AT&T appears to agree that the 800 tracking issue does not pose a substantial obstacle to implementation of a permanent per-call compensation system.

Other carriers, including even Worldcom, continue to resist being required to track either subscriber 800 or access code calls. To the extent that the Commission credits these carriers' representations that tracking would impose unreasonable expenses,<sup>18</sup> there are two alternatives: (1) allow such carriers to pay on a flat-rate basis, using methods similar

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<sup>18</sup> Among the advantages of IXC tracking, however, is the ability to capture "#-redial" calls, which are made after the caller has finished one call and is still connected to the IXC's calling platform. As Sprint recognizes, #-redial calls are clearly compensable as separate calls.



to those APCC has proposed for interim IPP compensation;<sup>19</sup> (2) turn small-carrier call tracking responsibilities over to the LECs.<sup>20</sup>

If smaller carriers are permitted to continue paying flat-rate compensation, the level must be set high enough so that carriers have an incentive to deploy call tracking capabilities and convert to per-call compensation as soon as it is economically feasible. As the Commission has repeatedly recognized, flat-rate compensation is inferior to per-call compensation in terms of the economic signals it sends to all affected participants. Therefore, carriers should not be given the type of economic incentive that MCI, for example, has had for the past few years to resist implementation of a feasible call tracking mechanism.

When a permanent compensation system is implemented for the major carriers, other carriers should be required to pay flat-rate compensation on the basis of their estimated shares of access code and subscriber 800 traffic (as discussed in APCC's initial comments) plus a 25% incentive charge to ensure that each carrier moves to the per-call system as soon as economically feasible.

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<sup>19</sup> For purposes of interim flat-rate compensation, APCC attaches updated results from its SMDR project indicating the average number of access code calls per payphone per month made to each of seven carriers using identified access codes. The seven carriers are carriers which earn more than \$100 million annual revenue and which APCC has found to receive significant access code traffic based on identified access code. The list may be updated further as APCC identifies additional carrier access codes.

<sup>20</sup> A variant of this alternative would be to turn all call tracking and/or compensation billing responsibilities over to the LECs.